

FILED

17 AUG -1 PM 3:24

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *AJS* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT SIMBA MAKONI,
Plaintiff,
vs.
COMMANDER EDWIN SCHROEDER,
et al.,
Defendants.

Case No. 3:16-cv-02497-BEN-PCL

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO
STATE A CLAIM PURSUANT
TO 28 U.S.C. § 1915(e)(2) AND
§ 1915A(b) AND FOR FAILING TO
PROSECUTE IN COMPLIANCE
WITH COURT ORDERS
REQUIRING AMENDMENT**

ROBERT SIMBA MAKONI ("Plaintiff"), proceeding pro se, and while detained at the Vista Detention Facility ("VDF") in Vista, California, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 in October 2016 (ECF No. 1). Plaintiff claimed that while he was in their custody, VDF officials failed to address his medical needs, threatened him when he complained, and segregated him based on race. (*Id.* at 7-14.)

I. Procedural Background

On December 19, 2017, the Court denied Plaintiff's motions seeking injunctive relief, appointment of counsel, and his initial request to proceed in forma pauperis ("IFP"), but granted him leave to either prepay the civil filing fee required by 28 U.S.C. § 1914(a), or file a renewed, properly supported IFP Motion (ECF No. 6).

1 Plaintiff filed a renewed IFP Motion (ECF No. 7), and on February 28, 2017, the
2 Court granted Plaintiff leave to proceed IFP, but dismissed his Complaint sua sponte for
3 failing to state a claim upon which relief can be granted pursuant to 28 U.S.C.
4 § 1915(e)(2) and § 1915A(b) (ECF No. 8).

5 In its February 28, 2017 Order, the Court informed Plaintiff of his various pleading
6 deficiencies, and granted him 45 days leave in which to file an Amended Complaint in
7 order to fix them. *Id.* at 4-13; *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995)
8 (per curiam) (unless it is clear the deficiencies in a complaint cannot be cured, pro se
9 litigants are generally entitled to notice of their pleading deficiencies and an opportunity
10 to amend prior to the dismissal of an action); *see also Lopez v. Smith*, 203 F.3d 1122,
11 1126-30 (9th Cir. 2000) (en banc).

12 After the deadline for amendment elapsed, Plaintiff requested an extension of time
13 in which to amend (ECF No. 10). On May 5, 2017, the Court granted Plaintiff's request,
14 and directed him to amend no later than May 26, 2017. *See* ECF No. 11 at 1-2.

15 Five months have passed since the Court first dismissed Plaintiff's Complaint, and
16 two more have passed since Plaintiff's extension of time expired. But he has yet to file an
17 Amended Complaint, or to request another extension of time in which to do so.

18 "If a plaintiff does not take advantage of the opportunity to fix his complaint, a
19 district court may convert the dismissal of the complaint into a dismissal of the entire
20 action." *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005). "The failure of the plaintiff
21 eventually to respond to the court's ultimatum—either by amending the complaint or by
22 indicating to the court that [he] will not do so—is properly met with the sanction of a Rule
23 41(b) dismissal." *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004).

24 **II. Conclusion and Order**

25 Accordingly, the Court **DISMISSES** this civil action in its entirety without further
26 leave to amend based on Plaintiff's failure to state a claim upon which § 1983 relief can
27 be granted pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and his failure to

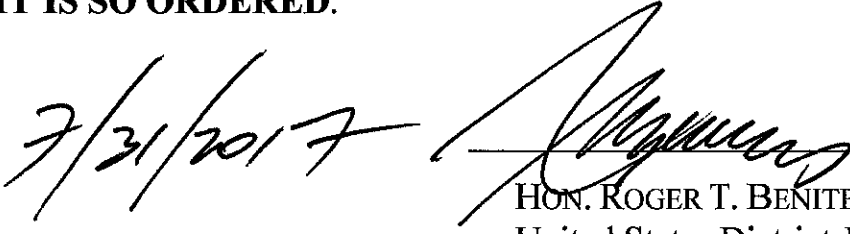
28 ///

1 prosecute pursuant to FED. R. CIV. P. 41(b) in compliance with the Court's February 28,
2 2017 and May 5, 2017 Orders (ECF Nos. 8, 11).

3 The Court further **CERTIFIES** that an IFP appeal would not be taken in good
4 faith pursuant to 28 U.S.C. § 1915(a)(3) and **DIRECTS** the Clerk to enter a final
5 judgment of dismissal and to close the file.

6 **IT IS SO ORDERED.**

7
8 Dated: 7/31/2017


9 HON. ROGER T. BENITEZ
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28